



Shell Oil Products US
150 N. Dairy Ashford
Houston, TX 77079

May 6, 2021

Kathryn Zyla
Executive Director
Georgetown Climate Center
600 New Jersey Avenue, NW
Washington, DC 20001

RE: Draft Model Rule

Dear Executive Director Zyla:

Equilon Enterprises LLC d/b/a/ Shell Oil Products US (“Shell”) appreciates this opportunity to comment on the Transportation Climate Initiative’s (“TCI”) draft Model Rule. As explained in our previous letters¹ Shell believes the TCI program can provide the support needed to promote innovation, spur local economic development, and deploy technologies that can reduce emissions.

The below comments focus on specific aspects of the draft Model Rule. It is critical that any issues be addressed at this stage of the process so that the final Model Rule can be adopted by the participating jurisdictions without modification. A uniform rule across the participating jurisdictions is essential to the success of the program.

Protecting the Integrity of the Program

Overall, Shell understands that the intent is to place the obligation as high in the supply chain as feasible (i.e., the position holder at terminals (“PH”)) and to implement the program through an accounting system that depends on the reporting of accurate data by terminal operators, position holders, and distributors. Consistent with that, the Model Rule requires parties to register, make monthly reports, and engage third parties to verify the accuracy of data. Once systems to manage the data are created, the system appears to place almost the entire burden on PHs while minimizing the administrative burden other parts of the supply chain and TCI

¹ November 1, 2019 & February 27, 2020

(<https://www.shell.com/sustainability/transparency/advocacy-and-political-activity/advocacy-releases.html>)

jurisdictions. While Shell understands the desire to achieve those objectives, they must be balanced against the need to create an enforceable program that will ensure a level playing field for market participants. The entire program depends on parties registering and reporting. However, there is no check in the system to identify deliveries of obligated fuel into the TCI jurisdictions from parties that do not even register. Shell suggests that all parties in the supply chain be required to retain records of Bill of Ladings (“BOLs”), as is the case under EPA’s fuels regulations, so that the states can audit the system periodically to ensure its integrity.

Registration and Reporting

It is Shell’s understanding that the intent of the Model Rule is to create a multijurisdictional program, with a single emissions and allowance tracking system, to enable electronic reporting in a simple, uniform and accurate program. Additionally, the expectation is that it will be composed of individual programs adopted, implemented, and enforced under the regulations of each jurisdiction. From the language in the draft Model Rule the following is not clear: 1) whether PHs, terminal operators and distributors register in each jurisdiction (CT, MA, RI & DC)? 2) Are disbursements from a PH at a Connecticut terminal for delivery into Connecticut treated differently than a disbursement from a PH at a Rhode Island terminal for delivery into Connecticut, where both Connecticut and Rhode Island are TCI jurisdictions? In that example, is the distributor that receives product from the Connecticut terminal not required to provide notification to the state and the PH, while the distributor that receives product from the RI terminal is required to provide such notifications (assuming that the terminal operator in RI does not volunteer to report for CT)? This example evidences the complexity of the program and the potential for confusion. It is logical to distinguish between TCI jurisdictions and non-TCI jurisdictions, but not within the TCI program jurisdictions. To mitigate the complexity and avoid unnecessary administrative work, Shell urges you to craft the Model Rule to clearly create a consolidated, coordinated program that minimizes the administrative burden by avoiding duplicative registrations and the imposition of burdensome reporting/notification requirements within the combined TCI jurisdictions.

Diversions

In most cases, the obligation will attach to the PH when the fuel crosses the rack at the terminal with a BOL indicating a TCI jurisdiction as the destination. The Model Rule should accommodate after-the-fact BOL corrections; however. There are likely many occasions where diversions can occur. For example, a delivery may leave a terminal in NY (a non-TCI jurisdiction at present) destined for a NY retail site that is redirected to Massachusetts (a TCI jurisdiction) for any number of reasons. In that case, unless the BOL can be corrected, the distributor would be identified as the obligated party. A similar situation could occur in the case of diversions of fuel out of the TCI jurisdictions. For example, if a delivery leaves a terminal in MA destined for a MA retail site, but is redirected to NY, that fuel would be incorrectly designated as obligated even though it is exported out of the TCI jurisdiction. The system would be simplified and more efficient if the Model Rule would allow BOL corrections for diversions, which would properly account for the fuel and place the obligation on the PH, and exempt exported fuel.

Exchanges

The Model Rule should clarify that in the case of exchanges at the terminal rack, the party that receives the product is the obligated party.

Below the Rack Flash Sales

The fuel supply chain is very dynamic. It is possible for title to change between the terminal and retail locations. In that case, the obligation/reporting/notification requirements should only attach to the distributor that delivers to the retail site, and not to intermediate distributors.

Definition of Position Holder

Shell recommends that the Model Rule adopt the IRS definition of Position Holder. See Treas Reg 48.4081-1:

Position holder means, with respect to taxable fuel in a terminal, the person that holds the inventory position in the taxable fuel, as reflected on the records of the terminal operator. A person holds the inventory position in taxable fuel when that person has a contractual agreement with the terminal operator for the use of storage facilities and terminaling services at a terminal with respect to the taxable fuel. The term also includes a terminal operator that owns taxable fuel in its terminal.

Definition of Rack

The draft Model Rule defines “Rack” as a mechanism capable of removing transportation fuel from a terminal into a means of transport other than pipeline or waterborne vessel. Limiting the definition of Rack to a mechanism specifically at “terminals” is too narrow. Some refineries also have racks but not all are also registered as terminals. In addition, there may be racks located at railcar transload facilities. Shell suggests the definition be expanded to: “Rack means a facility that contains a mechanism for delivering motor fuel from a refinery or terminal into a transport truck or railroad tank car; or any other means of transfer where previously untaxed fuel is transferred to a transport truck or railroad tank car.”

Reporting Frequency

The Model Rule, as drafted, requires monthly reports from terminal operators, PHs, and distributors. Shell suggests that quarterly reports should be sufficient and would avoid overburdening the supply chain with administrative tasks. There should be no concern about data integrity given all the cross checks in the system – i.e., reporting by multiple parties, third party verifications.

Offsets

The Model Rule allows for the use of offsets in very limited circumstances. Shell urges TCI to expand the scope of allowed offsets. Achieving the goals of the Paris Climate Accord and reaching net zero emissions will require a suite of measures. An important component of reaching net zero emissions will be offsetting emissions from the combustion of fuels that will be needed to meet the needs of consumers. Nature based solutions are part of the answer, but carbon capture and storage is another important component of offsetting those emissions, for example, when refinery process emissions are captured to reduce the overall carbon intensity of fuel products. Shell urges you to expand the allowable offsets to include CCUS and other offsets as discussed below.

The program should rely on the guidance and criteria in protocols established for existing offset programs; this would avoid duplication of efforts and provide the opportunity for wider applicability. Shell strongly encourages expanding the number and types of projects that are eligible to create offsets as well. In addition to the three proposed protocols (Landfill, Forestry and Livestock); Mine Methane Capture (MMC), Carbon Capture Use and Storage (CCUS), Ozone Depleting Substances (ODS), grasslands, soil carbon, wetlands and pneumatic valves are all projects that have been proven to provide environmental benefits. These benefits should not be limited to only those projects located in participating jurisdictions as detailed in 10.3(a)(2)(i)(b). As long as there are verifiable offset protocols in place, the Model Rule should not impose artificial borders on the eligibility of offset credits for compliance.

Additionally, there should not be multiple entities within the TCI reviewing and approving offset projects. Centralizing the offset project submission process will ensure consistencies within the program and will eliminate complexity. Separate processes for each participating State could result in significantly higher costs, would be less efficient and could create eligibility discrepancies between states under TCI jurisdiction. TCI can and should rely on third party registries to provide expertise and economies of scale in the initial offset project review administration.

With respect to the offset usage limit, Shell urges TCI to consider increasing it from 3.3% to 10%. A higher usage limit would encourage investment in long-term projects and create more affordable options for obligated entities. Once set, the usage limit rules should permit entities that did not utilize their allowable offset percentage to sell the balance to other compliance entities. This is not a new concept and would allow obligated entities of any size to achieve value from the offset program when other risks may have made it cost prohibitive for them to participate. Additionally, in order to reduce complexity and provide maximum flexibility, the interim control period limitation in section 6.5(a)(3) “or 3.3 percent of 0.50 times the JURISDICTION fuel supplier’s CO₂ emission for an interim control period” should be eliminated.

And finally, Shell urges you to expand the ability to generate offset credits to include the use of sustainable aviation fuel and the use of biomass-based diesel fuel in heating oil to provide additional incentives for these fuels to help reduce emissions. The TCI jurisdictions should take

an expansion view of offsets to encourage these and other actions that reduce emissions consistent with the goals of the program.

Cost Containment Reserve and Emissions Containment Reserve Trigger Prices

Shell supports the inclusion of both the Cost Containment Reserve (CCR) and Emissions Containment Reserve (ECR). These mechanisms provide predictability for the program and will help avoid extreme outcomes. However, the reserve prices included in the Model Rule are likely overly conservative and could limit the impacts of the program within the TCI-P jurisdiction. We suggest a reasonable upward adjustment to both the ECR and the CCR in order to capture additional program benefits while maintaining price protections and predictability. Furthermore, the Model Rule should be explicit in how additional credits released through the triggering of the CCR will be accounted for in future years of the program.

Definitions

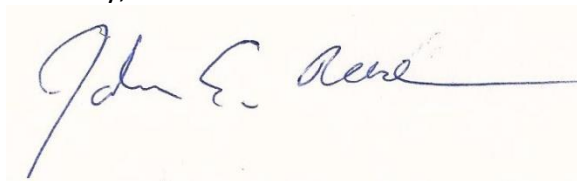
“On-road” diesel is defined broadly to include any fuel “commonly or commercially known as diesel fuel” or conforms with the ASTM D975 specification for diesel fuel that is delivered to a filling station for use in a diesel-powered highway vehicle. Consistent with the intent to exclude biofuels from the obligation, the Model Rule should clarify that the definition of “on-road” diesel does not include any renewable content.

The definition of “aviation gasoline” references ASTM specification D910. Shell suggests that references to the specific ASTM specification be eliminated to accommodate potential revisions of the ASTM specification to accommodate lead free aviation gasoline.

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We appreciate this opportunity to comment on the draft Model Rule. If you should have any questions concerning these comments, please feel free to contact me at 713.201.4450 or John.Reese@Shell.com.

Sincerely,

A handwritten signature in blue ink that reads "John E. Reese". The signature is written in a cursive style with a long horizontal line extending to the right.

John E. Reese
Downstream Policy & Advocacy Mgr., Americas